



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNR, MNDCL FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, and to recover the cost of the filing fee.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 8, 2021, a Canada post tracking number was provided as evidence of service. The landlord stated that the package was successfully delivered to the tenant.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

At the outset of the hearing the landlord stated they do not need an order of possession as they had received an order of possession on October 29, 2021.,

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on May 15, 2021. Rent in the amount of \$13,500.00 was payable on the first of each month. The tenant paid a security deposit of \$6,750.00. The tenancy ended on December 10, 2021, when the bailiffs attended.

The landlord testified that at the previous hearing held on October 28, 2021, and a decision made on October 29, 2021, they were granted an order of possession and a monetary order for unpaid rent, which was from May 1, 2021, up to July 5, 2021, as the Arbitrator prorated July 2021, rent for the 5 days. I have noted the file number of this decision on the covering page of this Decision.

The landlord testified that they are seeking unpaid rent for the balance of July 2021 (\$11,322.59), August (\$13,500), September (\$13,500) and October 2021 (\$13,500). The landlord stated that this amount totals the amount of \$51,822.59 – less security deposit of \$6,750.00 is the amount of \$45,072.59. The landlord stated when they made their application, they claimed the amount of \$34,350.00 to bring this matter within the jurisdiction of the Residential Tenancy Branch.

The landlord testified that in November 2021 the tenant made two payments towards November 2021 rent, totaling the amount of \$3,000.00. The landlord stated they have not yet made a claim for the balance of November rent or rent for December 2021, or bailiff fees. The landlord stated that loss may be for a future hearing; however, they currently do not know where the tenant is living to make that application.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation. Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

In this case, I am satisfied that the tenant remained in the rental unit, until the order of possession was enforced by the bailiffs. At the previous hearing the Arbitrator only considered unpaid rent from May 1, 2021, up to July 5, 2021.

After, I have applied the prorated rent of \$2,177.41 for July 2021, this leaves a balance due of \$11,322.59. The tenant did not pay any rent for August, September, and October 2021, totaling the amount of **\$51 827.59**. I find the tenant breach the Act when they failed to pay rent.

In this case the landlord reduced their claim to \$34,350.00 which included the filing fee to bring this matter within my jurisdiction, which I find this to be reasonable.

Therefore, I find the landlord is entitled to keep the security deposit to offset the original amount owed and is entitled to a monetary order for the amount claimed in their application for a total amount of **\$34,350.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is authorized to keep the security deposit to offset the original amount owed. I grant the landlord a monetary order in the amount of \$34,350.00.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *ACT Tenancy Act*.

Dated: February 14, 2022